THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PEITION No. 29845 of 1995

Dated: 05.12.2006

Between:

M/s. Balaji Railroad Systems Ltd.

… Petitioner

AND

The Labour Enforcement Officer,
(Central), Mancherial, Adilabad District,
& others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 29845 of 1995

ORDER:-

The petitioner in this writ petition questioned the proceedings of the Regional Labour Commissioner (Central) and the Authority under the Minimum Wages Act, 1948 (for short "the Authority") in Application No.28 of 1995 dated 17.07.1995 whereby the Authority allowed the application filed by the Labour Enforcement Officer (Central), Mancherial under Section 19(1) of the Minimum Wages Act, 1948 (for short "the Act") with a direction to the petitioner for payment of minimum wages in respect of 40 workmen engaged by it for the period from March 1994 to December 1994.

The petitioner, which is a company incorporated under the Companies Act, 1956, has admittedly engaged 40 workmen in connection with railway work during the period in question. Admittedly, the petitioner did not pay minimum wages to the said 40 workmen, leading to the said application being filed by the Labour Enforcement Officer (Central), Mancherial under Section 19(1) of the Act. Before the Authority, the petitioner raised mainly two contentions viz., (i) that the work being undertaken by the petitioner does not fall within the expression "scheduled employment" under the provisions of the Act; (ii) that the petitioner is only a sub-contractor and M/s. Orient

Cement, the 3rd respondent herein, being the principal employer, which was a necessary and proper party to the proceedings before the Authority and that therefore the application cannot be disposed of without impleading the said employer. The Authority rejected both the contentions.

As regards the first contention, the Authority found that as the work being undertaken by the petitioner being construction of permanent way of railway, which was construed as a work pertaining to road construction by the High Court of Bombay in a judgment reported in LLJ-II 1965 750, the work in question falls within the expression “scheduled employment” under the provisions of the Act. Regarding the second contention, the Authority held that since the petitioner is an employer and that under Section 12 of the Act, the employer is liable to pay wages, there is no need to implead the 3rd respondent, who is purported to be the principal employer.

Smt. W.V.S. Rajeswari, learned counsel appearing for the petitioner, vehemently contended that the Authority committed error in rejecting both the contentions raised by the petitioner. According to her, the work in question in connection with which the 40 workmen were engaged pertains only to the maintenance of railway siding and that therefore the same does not fall within the description of road construction. The learned counsel also contended that M/s. Orient Cement, being the principal employer, ought to have been impleaded in order to fasten the eventual liability on it.

I have considered both the contentions of the learned counsel and I am unable to accept either of these two contentions.

With regard to the first contention, neither the written statement

filed before the Authority nor even the affidavit filed in support of the present writ petition specifically described what exactly the nature of the work that was being got executed by the petitioner. In para 3 of the written statement filed before the Authority, this is what the petitioner pleaded:

> "The schedule of employment as are covered under the Minimum Wages Act does not in any way cover the employees working under the opponents so as to file the present application. The opponents before this Hon'ble authority have paid wages as are expected under law. They have not committed any violation of the law of the land. As the claim of the applicant is not properly substantiated and there is no proper application of mind before initiation of the present proceedings before this Hon'ble authority."

In the affidavit filed in this writ petition, it is mentioned as under:

> "Further, the activity which the petitioner company has done cannot be termed as the activity of construction of roads. The order of the 2nd respondent is contrary to law and liable to be quashed."

The aforementioned pleadings are extracted only to show that the pleadings of the petitioner both before the Authority and this Court are as vague as vagueness could be. If the petitioner was really serious in pursuing this line of contention viz., that the activity carried on by the petitioner does not fall within the expression "scheduled employment" under the provisions of the Act, the least that is expected of the petitioner is to raise a specific pleading in this regard and file a copy of the contract before the Authority. The petitioner failed to do the same without any reason. In the face of the finding of fact arrived at by the Authority and in the absence of any specific pleading, much less,

the material produced by the petitioner to show that the activity in question does not fall within the expression "scheduled employment", I am unable to disturb the finding of the Authority that the activity in question is comprehended by the provisions of the Act. With regard to the second contention, under Section 12 of the Act, "it is the employer, who is liable for payment of minimum wages." Section 2(e) of the Act defines "employer" as under:

> " '*Employer*' means any person who employs, whether directly or through another person or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of Section 26."

Having regard to the broad definition of the word "employer" under Section 2(e) of the Act, it cannot be said that the petitioner, who admittedly engaged the 40 workmen, does not fall within the definition of 'employer' and that the presence of alleged principal employer was necessary for adjudication of the dispute before the Authority. In any event, the petitioner failed to substantiate its contention that the 3rd respondent, was the principal employer. As already observed hereinabove, the petitioner failed to place the alleged contract entered between it and the 3rd respondent.

For the aforementioned reasons, the writ petition is devoid of any merit and hence the same is dismissed. No order as to costs.

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C.V. NAGARJUNA REDDY, J

Date: 05.12.2006

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